AMOUNT IN CONTROVERSY IN FEDERAL COURT DIVERSITY ACTION BASED ON ANTICIPATED COUNTERCLAIM

Horton v. Liberty Mutual Insurance Co.
367 U.S. 348 (1961)

Appellant, Horton, an injured employee, filed a claim with the Texas Industrial Accident Board for $14,035, the maximum amount allowable under Texas law, and was awarded $1,050. Respondent insurance carrier then filed a diversity suit[1] in the United States District Court to set aside the award[2] alleging that the employee "had claimed, was claiming and would claim $14,035," and denied petitioner's claim for any amount.[3] Horton moved to dismiss on the ground that the value of the matter in controversy was only the amount of the award and not the amount of the claim filed with the Texas Board. However, he also served a counterclaim for $14,035, which he designated as compulsory, subject to the motion to dismiss.[4] One week later, Horton also instituted an action in state court for the same amount. The District Court sustained the motion to dismiss on the theory that the amount in controversy was only the amount of the award.[5]

---

[1] Booth v. Texas Employers' Ins. Assoc., 132 Tex. 237, 246, 123 S.W.2d 322, 328 (1938): "The suit to set aside an award of the board [Texas Industrial Accident Board] is in fact a suit, not an appeal. It is filed as any other suit is filed and when filed the subject matter is withdrawn from the board." *But see* National Surety Corp. v. Chamberlain, 171 F. Supp. 591 (N.D. Texas 1959).

[2] Vernon's Tex. Ann. Civ. Stat., art. 8307, § 5: ". . . Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall . . . file with said Board notice that he will not abide by said final ruling and decision. . . . [S]aid Board shall proceed no further toward adjustment of such claim, other than herein provided." Suit is to be brought in court and "the court shall . . . determine the issues in such cause, instead of the Board, *upon trial de novo*, and the burden or [of?] proof shall be upon the party claiming compensation."

Federal courts have jurisdiction of suits to review awards by the Texas Industrial Accident Board. Ellis v. Associated Industries Ins. Corp., 24 F.2d 809 (5th Cir. 1928).

[3] Horton v. Liberty Mut. Ins. Co., 367 U.S. 348 (1961).

[4] This was pursuant to the requirements of Rule 13(2) of the Federal Rules of Civil Procedure: "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot require jurisdiction, except that such claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action."

[5] 28 U.S.C. § 1332 (1958): Diversity of Citizenship, amount in controversy, costs.
(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs and is between

The Court of Appeals reversed.[6] The Supreme Court, in a 5 to 4 decision, affirmed, holding that the complaint showed an amount in controversy in excess of the statutory minimum of $10,000. The Court held that the matter in controversy was not simply the amount of the award, but also included appellant's claim which was before the Board, made again in state court, and which was counterclaimed in the instant case.

The purpose of a jurisdictional amount[7] is to prevent congestion of federal court dockets[8] with cases that could be brought in state courts.[9] To give greater effect to the purpose of the minimum jurisdictional amount, Congress in 1958 raised the amount from $3,000 to $10,000.[10]

The Supreme Court, in *Saint Paul Indemnity Co. v. Red Cab Co.*,[11]

---

(1) Citizens of different States;

* * *

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and in addition, may impose costs on the plaintiff. . . .

6 Liberty Mut. Ins. Co. v. Horton, 275 F.2d 148 (5th Cir. 1960).

7 The history of federal court jurisdiction shows a continuing increase of the minimum jurisdictional amount. The first Judiciary Act (1789) set the jurisdictional amount for diversity cases at $500. This amount was decreased to $400; increased back to $500; then increased to $2,000. The amount was raised to $3,000 in 1911, and, in 1958, the jurisdictional amount was raised to the present requirement of $10,000.

8 S. Rep. No. 1830, 85th Cong., 2d Sess. 7 (1958): ". . . Statistics submitted by the Administrative Office of the United States Courts show the total number of cases which would be affected by the proposed $10,000 increase in the jurisdictional amount in diversity cases. According to its tables, the increase would eliminate an estimated 38.2 per cent of the contract cases. This estimate would be fairly accurate since the amount claimed in contract cases is usually the actual damages sustained under the contract.

"With regard to tort actions, the statistics submitted may not accurately reflect the true situation because in tort cases the amount claimed oftentimes bears little relation to the actual recovery. If plaintiffs, in the cases surveyed, were faced with a $10,000 limit at the time they filed suit, they doubtless would in many cases have claimed that amount instead of the present $3,000. In any event on the basis of the amounts claimed in the pleadings the proposed increase would eliminate an estimated 10 per cent of the tort cases.

"To make the $10,000 limitation a forceful one and to prevent inflated claims, the House Judiciary Committee has inserted a subsection permitting the trial judge to either withhold costs and/or impose costs on the plaintiff if plaintiff fails to obtain a judgment for at least the jurisdictional amount. . . ."

9 Lorraine Motors Inc. v. Aetna Cas. & Sur. Co., 166 F. Supp. 319 (E.D.N.Y. 1958).

10 72 Stat. 415, 28 U.S.C. § 1331 (1958).

11 303 U.S. 283, 291 (1938): "The status of the case as disclosed by the plaintiff's

held that "the sum claimed by the plaintiff controls" in determining the jurisdictional question. Prior to the *Saint Paul* case, the Supreme Court in *Healy v. Ratta*[12] had held that the jurisdictional amount is determined by the value of "the object of the suit."[13] The dissenters in the instant case argued that the respondent had as the object of its suit the "setting aside" of the award of the Texas Industrial Accident Board, that the value of this award was $1,050, and that it followed that the court should have determined the jurisdictional amount on the basis of the award.

In diversity cases, a substantial number of lower courts have held that the amount in controversy should be determined solely from the plaintiff's complaint.[14] However, there are several lower court opinions which hold that a counterclaim may be considered when determining whether the amount in controversy meets the jurisdictional requirements.[15] In *Home Life Insurance Co. v. Sipp*,[16] it was held that filing a counterclaim in an amount which of itself or added to the plaintiff's claim makes up the jurisdictional amount is sufficient to establish jurisdiction.

It has been held that federal question jurisdiction cannot be based upon an anticipated defense.[17] The Supreme Court has taken the view, in

---

complaint is controlling in the case of removal since the defendant must file his petition before the time for answer or forever lose his right to remove." *Accord*, National Sur. Corp. v. Chamberlain, 171 F. Supp. 591 (1959); Lemon v. State Auto Mut. Ins. Co., 171 F. Supp. 92 (1959); Ingram v. Sterling, 141 F. Supp. 786 (1956); National Sur. Corp. v. City of Excelsior Springs, 123 F.2d 573 (8th Cir. 1941).

[12] 292 U.S. 263 (1934).

[13] Mississippi and Missouri R.R. v. Ward, 67 U.S. 485 (1862), held that the jurisdiction "is tested by the value of the object to be gained by the bill. . . ."

[14] 1 Moore's Federal Practice 511: ". . . [I]t must be said, however, that the prevailing note of the decisions and the impulses of logic and expediency indicate that the amount in controversy should be determined from the standpoint of the plaintiff.

"Certainly such a standpoint leads to a greater certainty and simplicity than would ensue should the defendant's viewpoint be injected into the determination.

"The best support for the plaintiff viewpoint theory of determining the amount in controversy is put by the quasi-in-rem actions removed into federal courts in which federal jurisdiction is sustained as long as the claim exceeds the jurisdictional amount even though the property seized is less than the jurisdictional amount. The defendant only stands to lose the property unless he puts in a general appearance yet jurisdiction is supported on the plaintiff's claim."

[15] See, *e.g.*, Parmelee v. Ackerman, 252 F.2d 721 (1958); Roberts Min. & Mil. Co. v. Schreder, 95 F.2d 522 (1938); Ginsberg v. Pac. Mut. Life Ins. Co. of Calif., 69 F.2d 97 (1934); Central Commercial Co. v. Junes-Dusenberry Co., 251 Fed. 13 (1918).

[16] 11 F.2d 474 (3d Cir. 1926).

[17] Louisville & N.R.R. v. Mottley, 211 U.S. 149, 152 (1908): ". . . [A] suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. *It is not enough* that the plaintiff alleges some *anticipated defenses* to his cause of action and asserts that the defense to his cause of action is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of litigation, a question under the Constitution would

cases involving a federal question, that jurisdiction must be determined by " . . . what necessarily appears in the plaintiff's statement of his claim . . . unaided by anything alleged in anticipation or avoidance of defenses which may be interposed by the defendant."[18] There is no such definite ruling concerning the amount in controversy in diversity cases.

The suit brought in either the Texas state court or Federal District Court to set aside the Texas Industrial Accident Board award is a trial de novo on all issues.[19] The Accident Board's award becomes binding only if suit is not instituted within twenty days after such award is made.[20] The entire claim is to be adjudicated. The majority held that the respondent insurance company's claim of no liability put in issue the entire $14,035 amount which petitioner claimed was due him and which could have been awarded by the District Court. The Court further held that the claim was made in good faith and did not appear, as a legal certainty, to be for less than the jurisdictional amount.[21]

Justice Clark, dissenting, stated that the Court "plows under" the rule that in determining the amount in controversy for federal jurisdictional purposes, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith."[22] However, as its phrasing plainly indicates, this rule is applicable only to a simple action for money and merely tells a district judge that he may not refuse jurisdiction of a suit for money because it is improbable that the plaintiff will recover, at the trial, more than $10,000. The rule is inapplicable to the instant case. The Court stated that "the general federal rule has long been to decide what the amount in controversy is from the complaint itself . . . . " It is submitted that the Court did not violate this rule in looking to the amount of the defendant's claim as properly pleaded in plaintiff's complaint. The contention in the dissenting opinion that the Court "plows under a rule of almost a quarter of a century's standing" apparently results from a failure to distinguish between a simple action for money and an action for a determination that plaintiff is not liable to defendant.

The dissent recognizes the similarity of the instant case to an action

---

arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution." (Emphasis added.)

18 Taylor v. Anderson, 234 U.S. 74, 76 (1914).

19 Vernon's Tex. Ann. Civ. Stat., arts. 8306-8309. The filing of suit to set aside a compensation award brings all parties and the entire controversy before the court for a trial de novo; the court being invested with power to determine every issue involved, whether presented to the board or not. Gulf Cas. Co. v. Jones, 290 S.W.2d 334 (1956).

20 Vernon's Tex. Ann. Civ. Stat., art. 8307, § 5.

21 St. Paul Indemnity Co. v. Red Cab Co., *supra* note 11, at 289: "[I]f, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff was never entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed." *Accord*, Calhoun v. Kentucky-West Virginia Gas Co., 166 F.2d 530 (6th Cir. 1948).

22 St. Paul Indemnity Co. v. Red Cab Co., *supra* note 11, at 288.

for a declaratory judgment[23] and contends that the Court has allowed respondent to turn its suit into an action for a declaratory judgment without meeting the requirements of the Declaratory Judgment Act. This contention seems unwarranted. Texas has provided for a particular kind of civil action. It is quite true that this action does, to some extent, resemble a declaratory judgment action. However, it does not follow from this that the action provided by the Texas statute must follow the Declaratory Judgment Act in every respect. The Court has not "permitted respondent to turn its suit into an action for a declaratory judgment." The Court has merely permitted respondent to follow the procedure authorized by the Texas statute.

The dissent seems incorrect in concluding that "the Court is allowing diversity jurisdiction to be predicated upon a counterclaim which might possibly be filed by petitioner." Instead, the Court clearly allowed jurisdiction to be predicated upon the claim by the employee which was properly pleaded in the insurance company's complaint. The counterclaim asserted by the employee in the instant case differs fundamentally from a counterclaim asserted in an ordinary action for money. If plaintiff brings a diversity tort action in a district court for $8,000, and defendant counterclaims against plaintiff for $15,000, the question would indeed be presented as to whether diversity jurisdiction could be predicated on a counterclaim.[24] But that question is not presented in the instant case, and the holding of the Court should not be interpreted as giving any indication that the Court would answer that question in the affirmative. There is no indication that the majority intended to depart from the general federal rule that the amount in controversy should be determined from the complaint itself.

[23] The instant case somewhat resembles a suit for a declaratory judgment in which plaintiff seeks a declaration of nonliability on a money claim. In such an action, the amount in controversy is the amount of defendant's claim against plaintiff. Thus, in an action by an insurer for a declaration of nonliability under a life insurance policy, the amount in controversy is the face amount of that policy. Franklin Life Ins. Co. v. Johnson, 157 F.2d 653 (10th Cir. 1946).

[24] See Comment, "Federal Jurisdictional Amount: Determination of the Amount in Controversy," 73 Harv. L. Rev. 1377 (1960).